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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 EDWARD JOSEPH NELSON,

8 Plaintiff,

9 v.

10 DAN PACHOLKE, PAT GLEBE, RON
11 FRAKER, WILLIAM ROLLINS, S.
12 OBENLAND, KATHY RENINGER,
13 PRICE M. CHENAULT, J. DAVID
14 KENNEY, CRC COMMITTEE
15 STAFFORD CREEK MEDICAL,
16 CLIFFORD J. JOHNSON, SHARON
MORGAN, DAVE SIMS, M. HOLTHE,
CRC COMMITTEE CBCC, and
G. PRESSEL,

Defendants.

No. C12-5048 RBL/KLS

ORDER DENYING MOTION FOR
COUNSEL

17 Before the Court is Plaintiff's Motion for Appointment of Counsel. ECF No. 18. Having
18 carefully considered the motion and balance of the record, the Court finds that the motion should
19 be denied.

20 **DISCUSSION**

21 No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v.*
22 *Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). *See also United States v. \$292,888.04 in U.S.*
23 *Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is
24 discretionary, not mandatory.”) However, in “exceptional circumstances,” a district court may
25 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28
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1 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*
2 *grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To decide whether exceptional
3 circumstances exist, the court must evaluate both “the likelihood of success on the merits [and]
4 the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal
5 issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting
6 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show he
7 has an insufficient grasp of his case or the legal issue involved and an inadequate ability to
8 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d
9 1101, 1103 (9th Cir. 2004).

11 That a *pro se* litigant may be better served with the assistance of counsel is not the test.
12 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the issues
13 involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development of further
14 facts during litigation. But, if all that was required to establish the complexity of the relevant
15 issues was a demonstration of the need for development of further facts, then practically all cases
16 would involve complex legal issues. *Id.*

18 Plaintiff states that he is unable to afford counsel, that his current confinement will limit
19 his ability to litigate, that the issues are complex, that he has limited access to a law library and
20 limited knowledge of the law. These are not exceptional circumstances. Plaintiff filed his
21 complaint *pro se* and has demonstrated an ability to articulate his claims *pro se* in a clear fashion
22 understandable to this Court. This is also not a complex case involving complex facts or law.

24 Finally, Plaintiff presents no evidence to show that he is likely to succeed on the merits of
25 his case. While Plaintiff may not have vast resources or legal training, he meets the threshold for
26 a *pro se* litigant. Concerns regarding investigation, access to legal resources or examination of

1 witnesses are not exceptional factors, but are the type of difficulties encountered by many pro se
2 litigants. Plaintiff has failed in his burden to demonstrate an inability to present his claims to this
3 Court without counsel.

4 Accordingly, it is **ORDERED**:

- 5 (1) Plaintiff's motion for counsel (ECF No. 18) is **DENIED**.
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7 (2) The Clerk shall send a copy of this Order to Plaintiff.

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9 **DATED** this 18th day of April, 2012.

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12 Karen L. Strombom
13 United States Magistrate Judge
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